

at the time the decree was entered had general jurisdiction of the subject matter and of the parties. The court so found and no appeal was taken by the defendants from that finding.

"Each of the decrees now being considered sets forth the consent thereto by claimant. The name of claimant's counsel appears at the foot of each decree as further evidence of such consent. In addition, claimant executed two \$5,000.00 bonds, wherein M. W. Miller Company is principal and M. W. Miller is the surety, and each of which refers to the decree in express terms and is conditioned upon the performance of all the terms and conditions thereof. In spite of the consents thus affirmatively appearing in the record, claimant now seeks to vacate the decrees and asks for a trial on the merits on facts which existed at the time the decrees were entered. By its consent the claimant fully waived, rightly or wrongly, its right to have such a trial. In addition, the decrees themselves constitute judicial acts which have the same dignity, force, finality and effect of all other judgments. They create 'an estoppel, merger or bar' (*Bullard v. Commissioner of Internal Revenue*, 7 Cir. 90 F. (2d) 144, 147), precluding the claimant from attacking the provisions of the decrees since the court had jurisdiction of the subject matter and of the parties. This conclusion is not impaired by the provisions of Rule 60 (b) as amended, or its provisions prior to its amendment. The rule has to do with practice, as is clearly stated in the Report of the Advisory Committee (5 F. R. D. 479) ;

It should be noted that Rule 60 (b) does not assume to define the substantive law as to the grounds for vacating judgments, but merely prescribes the practice in proceedings to obtain relief.

"For the reasons hereinbefore stated, it follows that the motions of claimant to vacate must be denied. But if that were not the case, upon the showing made I have concluded that claimant has not established 'excusable neglect' and, in the exercise of the discretion vested in me,<sup>1</sup> the motions to vacate would have to be denied.

"There remains for consideration the claimant's motions that the time for bringing the condemned articles involved into compliance with the law be further extended. To these motions the government interposes no objection, and consents that the claimant be allowed a reasonable extension of time for this purpose. Claimant's motions in this behalf will be allowed and appropriate amendments to the decrees will be entered extending the time for bringing the articles involved into compliance with the law to March 1, 1949, the same, however, to include a provision that proper action to this end, as provided in the decrees, be undertaken by claimant without delay and continued until completion without avoidable interruption.

"The United States Attorney will draft and present for entry the necessary orders and amendments in conformity with this opinion."

After 55 drums of the product were found fit for human consumption and released, the claimant filed motions for the release of an additional 45 barrels and 200 cans of the product.

On April 11, 1950, the court ordered the Food and Drug Administration to retest the remaining barrels and cans of the product at the claimant's expense. As a result, 29 additional barrels of the product were released and 28 were destroyed on June 30, 1950. On November 1, 1950, a motion was filed by the Government for the destruction of the cans of the product since the claimant had not brought the article into compliance with the law in accordance with the terms of the decree. Subsequently, 310 cans of the 1,600 which had been seized were released and the remainder were destroyed. On July 2, 1951, the court ordered the proceedings terminated and the bond discharged.

### VEGETABLES AND VEGETABLE PRODUCTS

17980. Misbranding of canned mushrooms. U. S. v. 198 cases \* \* \*.  
(F. D. C. No. 31521. Sample No. 28352-L.)

<sup>1</sup> *Ira S. Bushey and Sons, Inc., v. W. E. Hedger Transp. Corp.*, 167 F. (2d) 9, 19, cert. den. Oct. 11, 1948; *W. E. Hedger Transp. Corp. v. Ira S. Bushey and Sons, Inc.*, 155 F. (2d) 321, 324 cert. den. 329; U. S. 735; *Western Union Telegraph Co. v. Dis-mang*, 106 F. (2d) 362, 364; *Bowles v. Brunick*, 66 F. Supp. 557, 558.

**LABEL FILED:** September 14, 1951, Northern District of California.

**ALLEGED SHIPMENT:** On or about March 21, 1951, by the Metropolitan Pool Car Associates, from New York, N. Y.

**PRODUCT:** 198 cases, each containing 24 cans, of mushrooms at San Francisco, Calif.

**LABEL, IN PART:** (Can) "Valley Bloom Brand Chopped Mushrooms Drained Weight Of Mushrooms 8 Oz. Avoir-Metric Equiv. 226 Grams."

**NATURE OF CHARGE:** Misbranding, Section 403 (a), the label statement "Drained Weight Of Mushrooms 8 Oz. Avoir-Metric Equiv. 226 Grams" was false and misleading as applied to an article, the drained weight of which was less than 8 ounces avoirdupois.

**DISPOSITION:** November 23, 1951. Pacific Coast Merchandise Co., Inc., Portland, Oreg., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for relabeling, under the supervision of the Federal Security Agency.

**17981. Adulteration of canned sauerkraut. U. S. v. 198 Cases \* \* \*  
(F. D. C. No. 31488. Sample No. 6917-L.)**

**LABEL FILED:** August 21, 1951, Western District of Pennsylvania.

**ALLEGED SHIPMENT:** On or about July 11, 1951, by the Crawford Sauerkraut Co., from Canandaigua, N. Y.

**PRODUCT:** 198 cases, each containing 24 1-pound, 11-ounce cans, of sauerkraut at Altoona, Pa.

**LABEL, IN PART:** (Can) "A & P Sauerkraut Grade A."

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of flies, maggots, and other insects, and insect eggs; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

**DISPOSITION:** November 1, 1951. Default decree of condemnation and destruction.

**17982. Adulteration of canned spinach. U. S. v. 199 cases \* \* \* (and 1 other seizure action). (F. D. C. Nos. 31596, 31646. Sample Nos. 28380-L, 28553-L.)**

**LIBELS FILED:** August 9 and 29, 1951, District of Massachusetts.

**ALLEGED SHIPMENT:** On or about July 20 and 31, 1951, by Flotill Products, Inc., from Stockton, Calif.

**PRODUCT:** 397 cases, each containing 24 1-pound, 11-ounce (or 2-ounce) cans, of spinach at Boston and Somerville, Mass.

**LABEL, IN PART:** (Can) "A & P Young Tender Spinach Grade A."

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of aphids and other insects.

**DISPOSITION:** November 19, 1951. Default decrees of condemnation and destruction.